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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,121	10/30/2000	Jerome Aucouturier	746200-000062	5877

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EXAMINER

EWOLDT, GERALD R

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/698,121

Applicant(s)

AUCOUTURIER ET AL.

Examiner

G. R. Ewoldt, Ph.D.

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19,20 and 30-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-20 and 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's amendments and remarks filed 1/07/04 have been entered.
2. Claims 19-20, 30-33, and newly added Claim 34, are being acted upon.
3. In view of Applicant's amendment and remarks, particularly Applicant's argument that the mannitan oleates of the prior art are not polyethoxylated, the previous rejections under 35 U.S.C. 102(b) have been withdrawn. Additionally, the previous rejections under the second paragraph of 35 U.S.C. 112 have also been withdrawn.
4. The following are new grounds for rejection.
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 19-20 and 30-34 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, specifically:
 - A) In Claims 19 and 34, "indice" is not a word, accordingly the claims are vague and indefinite. It is possible that either of the words indexes or indices were intended to be used, however, in the context of the claims, it is unclear what "having a number of ethoxylation indexes or indices" would mean.
 - B) In Claim 33, the term "OE" is vague and indefinite as the term has not been defined in the specification.
 - C) Claim 34 is nonsensical. In view of Applicant's response, filed 1/07/04, it is the Examiner's interpretation of Claims 19, 20, 30, 31, and 33 that said claims recite a method of making a vaccine comprising combining an adjuvant and an antigen. Claim 34 then recites a method of making a vaccine comprising administering said vaccine to a subject. Administering a vaccine

is not a method of making a vaccine. Accordingly, the claim is considered to be nonsensical.

Regarding Applicant's arguments, filed 1/07/04, Applicant indicates that he is "confused" that the term "OE" has been found vague and indefinite as Applicant is of the position that the use of said term was previously addressed.

Applicant is advised that the use of the term "EO" has been previously addressed but the use of the term "OE" has not.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 19-20 and 30-34 are rejected under 35 U.S.C. § 112, first paragraph, as the specification does not contain a written description of the claimed invention, in that the disclosure does not reasonably convey to one skilled in the relevant art that the inventor(s) had possession of the claimed invention at the time the application was filed. This is a new matter rejection.

The specification and the claims as originally filed do not provide support for the invention as now claimed, specifically:

A) The term "indice" in Claims 19 and 34 has not been found in the specification.

B) The term "OE" in Claim 33 has not been found in the specification.

C) The method Of Claim 32, comprising a process for enhancing the immune response to a vaccine comprising administering said vaccine to a subject.

D) The method Of Claim 34, comprising a method of providing an adjuvant effect to a vaccine comprising administering said vaccine to a subject.

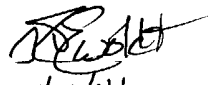
Applicant indicates that support for the claims can be found in the specification at page 8, lines 3-15. A review of the specification, however, shows no support for the inventions of the amended claims.

9. No claim is allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Gerald Ewoldt whose telephone number is (571) 272-0843. The examiner can normally be reached Monday through Thursday from 7:30 am to 5:30 pm. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841.

11. **Please Note:** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Inquiries of a general nature may also be directed to the Technology Center 1600 Receptionist at (571) 272-1600.

G.R. Ewoldt, Ph.D.
Primary Examiner
Technology Center 1600


5/20/04
G.R. EWOLDT, PH.D.
PRIMARY EXAMINER